CRIMINAL APPEAL (SJ) NO.280 OF 1993

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Against the judgment dated 30.8.93 and Order of conviction dated 1.9.93 passed in S. Tr. No. 298/106 of 1988/90 by the 4th Additional Sessions Judge, Nalanda.

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Mohammad Israel ..... Appellant

Versus

The State of Bihar ..... Respondent

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For the appellant : Mr. Rajan Ghoshrave, Advocate

For the State : Mr. Nand Kishore Prasad,Advocate

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P R E S E N T

HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM

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S.M.M.Alam,J. This appeal has been preferred by sole appellant Mohammad Israel, who has been convicted for the offence under section 395 of the Indian Penal Code and sentenced to under go rigorous imprisonment for three and half years by judgment dated 1.9.1993 passed by the 4th Additional Sessions Judge, Nalanda in Sessions Trial No.298/106 of 1988/90.

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2. Being aggrieved by and dissatisfied by the said judgment and order the appellant has preferred this appeal.

3. The prosecution case, as per the fard bayan (Ext.1) of Md. Enamul Haque (P.W.4) of village Banolia, P.S. Bihar, District: Nalanda recorded by Arun Kumar Sinha, Inspector-cum-Officer in charge of Bihar P.S. on 23.3.87 at 19.45 hrs at the house of the informant, in brief, is that on the same day at about 7.15 PM informant Md. Enamul Haque was at his house

and was teaching the children. In the meantime, some dacoits, who had covered their faces entered into his house. Tarannum Ara (P.W.2), who happens to be the informant's daughter, was cooking food inside the house at that time. Seeing one of the dacoits, she railed halla that a mad man had entered into the house, whereupon, the man told her that he and his associates were dacoits. Simultaneously, 7-8 other dacoits entered into the house. 4-5 dacoits surrounded the informant and remaining dacoits started taking out the articles. The dacoits picked up a double barrel gun belonging to the informant and snatched ornaments from his wife and daughters. Thereafter, all the dacoits fled away. It is said that the informant's daughter Tarannum Ara identified one of the dacoits, who had pistol in his hand and had covered his face. He was Mohammad Israel, son-in-law of her neighbour Yusuf Mian. The informant also claimed to have identified him while he was running away. The informant gave the description of other dacoits and claimed to identify them in the light of the lantern and debris. On halla, several persons of the locality reached at the house of the informant and saw the dacoits running away. It is said that the dacoits also exploded 4-5 bombs to terrorise the villagers due to which the villagers could not chase the dacoits and the dacoits succeeded in fleeing away with the looted gun as well as ornaments.

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4. After recording fard bayan, the Officer in charge forwarded the same for drawing formal FIR and

thereafter on receipt of the fard bayan in Bihar P.S. formal FIR of Bihar P.S. case no.109 of 1987 under section 395 of the Indian Penal Code (Ext.2) was drawn. The investigation of the case was handed over to Sri Ram Suresh Pathak, who investigated the case but during the pendency of investigation he was transferred and, as such, further investigation was done by the Officer in charge Arun Kumar Sinha, who submitted charge sheet against the accused persons. After submission of charge sheet, cognizance was taken and the case was committed to the Court of Sessions where on 3.9.90 charge under section 395 of the Indian Penal Code was framed against the appellant. The appellant denied the charge and thereafter he was put on trial and by the impugned judgment he was convicted.

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5. The defence of the accused-appellant is that the appellant is married to the daughter of Md. Yusuf, who has got his house adjacent east to the house of the informant. Said Md. Yusuf, father in law of the appellant has given a piece of land to the appellant over which the appellant has constructed his own house. The informant wanted to take electric line by putting electric pole upon the land of the appellant which was objected by the appellant and due to that there was some animosity between the appellant and the informant and due to that enmity the informant taking advantage of the incident of dacoity falsely implicated the appellant. Further defence is that the appellant has clean antecedent and prior to this and

even after this case not a single criminal case is pending against the accused-appellant.

6. In order to prove its case the prosecution has examined altogether six witnesses namely, Gulshan Ara (P.W.1), Tarannum Ara (P.W.2), Anjum Ara (P.W.3), Md. Enamul Haque (P.W.4), S.I. Ram Suresh Pathak (P.W.5) and S.I. Arun Kumar Sinha (P.W.6). Out of the above said witness, P.W.4 is the informant of this case and P.W.1, 2 and 3 are his daughters, whereas, P.Ws.5 and 6 are the police officers, who had either recorded the fard bayan of the informant or had conducted investigation.

7. On behalf of the defence, altogether five witnesses were examined, namely, Md. Wahabuddin Jafri (D.W.1), Md. Usman (D.W.2), Md. Azimuddin (D.W.3), Ram Chandra Lal(D.W.4) and Subhas Chandra (D.W.5).

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8. During the course of argument, learned advocate appearing on behalf of the appellant submitted that in this case not a single co-villager or the independent witness has come forward to depose that on the alleged date of occurrence he had identified the appellants as one of the dacoits, who had committed dacoity in the house of the informant nor any independent witness has supported this fact that when on hearing halla of dacoity he went to the house of the informant, the informant disclosed that he had identified the appellant as one of the dacoits. The learned advocate submitted that this aspect of the case establishes beyond doubt that the appellant has been falsely implicated in this case. His further

submission is that even the Investigating Officer, who has been examined as P.W.5, has deposed at para 19 that he had thoroughly enquired about the criminal antecedent of the appellant but his antecedent was found clean. He further submitted that all these circumstances show that the appellant has been falsely implicated in this case by the informant due to previous enmity but the trial court did not consider all these facts while passing judgment of conviction against the appellants.

9. It appears from the perusal of the impugned judgment that the finding of the court below is based upon the evidence of the informant (P.W.4) and his three daughters, who are P.W.1 to 3. There is no doubt that all the above mentioned witnesses are highly interested witnesses. Therefore, for placing reliance upon such type of evidence the law requires corroboration from independent sources if there is possibility of presence of independent witnesses at the time of alleged occurrence. In this case, the fard bayan of the informant itself discloses that immediately after the occurrence of dacoity several persons of the locality including one Ashraf Mian had come to the house of the informant and they had seen the dacoits fleeing away but none of the persons of the locality including the said Ashraf Mian was examined on behalf of the prosecution. Their evidence was very much vital in the case as they could have at least supported this fact that immediately after the occurrence of dacoity the informant had disclosed the

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name of this appellant as one of dacoits. I am of the view that non-examination of the independent witnesses has created doubt upon the credibility of the prosecution witnesses. It became more stronger when I find that the I.O., who is P.W.5, in his evidence has admitted this fact that the accused-appellant in his defence has stated before him that as he had opposed the attempt of the informant in taking away electric line from his land, he has been falsely implicated in this case and during investigation he had not found any criminal antecedent of the accused-appellant. Not only this but the perusal of the case diary also shows that except the informant, his wife and his daughters not a single independent witness has stated before the police that the appellants had participated in the commission of dacoity which had taken place in the house of the informant although the case diary shows that the I.O. had examined several independent witnesses of the locality. The possibility that the appellant was falsely implicated by the informant due to enmity is also established by the deposition of the defence witnesses as at least five independent witnesses have come forward to support the defence case that the appellant has been falsely implicated in this case and that the informant had not disclosed the name of the appellant amongst the dacoits who had committed dacoity in his house. Thus, there is ample evidence on record to believe that there is possibility of false implication of the appellant in

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this case and, therefore, I am of the view that the appellant at least deserves benefit of doubt.

10. In the result, I find that there is merit in this appeal and, as such, the same is hereby allowed. The conviction and sentence passed against the appellants under section 395 of the Indian Penal Code are hereby set aside and the appellant is given benefit of doubt and is acquitted of the charge under section 395 of the Indian Penal Code. The appellant is on bail and, so, he is discharged from the liabilities of his bail bond.

(Syed Md. Mahfooz Alam,J.)

Patna High Court
Patna.
Dated the 8th July, 2008.
NAFR/ JA

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